IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO 1926 of 1999
to
FIRST APPEAL NO 1932 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SPECIAL LAND ACQUISITION OFFICER

Versus

DILIPBHAI DESAIBHAI PATEL HIMSELF & AS A VAHIVATKARTA OF

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Appearance:
1. First Appeal No. 1926 to 1932 of 1999
GOVERNMENT PLEADER for Petitioner No. 1-2
MR KL DAVE for Respondent No. 1

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CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 27/11/2002

ORAL COMMON JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these Appeals are disposed of by this common Judgment as they are arising out of the impugned common Judgment and Award dated 29.12.1997 passed by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in Land Reference Case Nos.356, 357, 371, 380, 381, 483 and 404 of 1999 (Land Reference Case No.371/90 was taken up as the main case by the Reference Court).

2. The land of the respondents in all these Appeals were acquired under Notification dated 28.8.1986 issued u/s.4(1) of the Land Acquisition Act (for short "the Act") followed by the notification u/s.6 of the Act issued on 13.11.1986. In Land acquisition Cases of 1986 Award was passed by the Land Acquisition Officer on 31.3.1997 by which the respondents were awarded Rs.350/- per Are against which, as stated earlier, aforesaid 7 Land Reference cases were filed in 1990 before the Court of learned 2nd Extra Assistant Judge, Kheda at Nadiad. The learned Reference Court awarded Rs.1690/- per Are for irrigated land to the respondents land owners by his impugned common judgment and award dated 29.12.1997. The acquisition was for the public purpose of Ahmedabad - Vadodara Express Highway. This impugned common Judgment and Award passed by the learned Judge is under challenge in all these Appeals.

3. It was contended by the learned A.G.P. Ms.Devani for the appellant that the learned Judge ought not to have awarded Rs.1690/- per Are. She submitted that on the material before him the Land Acquisition Officer has rightly awarded Rs.350/- per Are. She, therefore, submitted that all the Appeals be allowed.

4. However, learned Counsel Shri Dave, appearing for the respondents land owners in all these Appeals submitted that under the Notification issued u/s.4(1) of the Act on 29.8.1986 followed by the Notification dated 13.11.1986 other land of the land owners of the same village Samarkha were acquired for which the Land Acquisition Officer passed an Award dated 10.6.1987 awarding Rs.350/- per Area to the land owners against which Land Reference Cases were filed in 1990 before another another Reference Court at Nadiad. All these matters came to be decided by the learned Judge by his impugned common Judgment and Award dated 26.12.1991 whereby the learned Judge awarded Rs.1500/- per Are instead of Rs.350/- per Are awarded by the Land Acquisition Officer. The purpose for acquisition was also the same for construction Ahmedabad - Vadodara Express Highway. Against which the Special Land Acquisition Officer filed First Appeal No.1906/92 and 1907/92 before

the Division Bench of this Court. The same came to be decided by the Division bench of this Court on 12/13.11.1992, whereby the Division bench of this Court dismissed all those Appeals and confirmed the impugned Judgment and Award passed by the Reference Court awarding Rs.1500/- per Are to the land owners. He, therefore, submitted that the Award passed by the Reference Court in those case is slightly on a higher side. In these cases the Reference Court awarded Rs.1690/- per Are instead of Rs.1500/- per Are and therefore all these Appeals can be allowed to that extent only, however, the submission made by Ms.Devani to confirm the award passed by the Special Land Acquisition Officer, awarding Rs.350/- per Are, should be rejected.

5. Having heard the learned Counsel fro the parties and having perused the Judgment of the Division Bench of this Court in the case of SPECIAL LAND ACQUISITION OFFICER, KHEDA & ANR. V/S. SHANTIBHAI JIVABHAI PATEL, REPORTED IN 1993 (1) G.L.H. 542, we are of the considered opinion that when co-ordinate bench of this Court confirmed the Judgment and Award passed by the Reference Court for the land which were acquired for the same purpose and of the same village then the respondents claimants would be entitled for at least that much amount i.e. Rs.1500/- per Are and not Rs.350/- per Are, as submitted by Ms.Devani, learned A.G.P.

6. The Reference Court in all these cases have awarded Rs.1690/- per Are which is slightly on a higher side and when the Judgment and Award passed by Reference Court awarding Rs.1500/- per Are for the acquisition of the land of the same village, confirmed by the Division Bench in 1992, then we are of the considered opinion that all these Appeals are required to be partly allowed to that extent only.

10. Accordingly, all these Appeals are partly allowed with proportionate cost and the total market price of the agricultural land of the village Samarkha is decided at Rs.1500/- (Rupees one thousand five hundred only) per Are instead of Rs.1690/- awarded by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in his impugned common Judgment and order dated 29.12.1997. Accordingly, we direct the Appellant to pay compensation to the respondents claimant at the rate of total market price of Rs.1500/- per Are forthwith, if they have not paid the said amount so far.

All the respondents claimants are also entitled to get 30 % solatium upon the market price without

interest. Rest of the common judgment and award passed by the learned 2nd Extra Assistant Judge, Kheda at Nadiad in all these cases is confirmed.

In the instant case the respondents claimants have not filed cross objections, but in view of the Judgment of the Constitutional Bench of the Honourable Supreme Court of India in the case of SUNDAR v/s. UNION OF INDIA, reported in 2001 (7) SCC 211, the respondents claimants would be entitled to get the interest on the amount awarded u/ss. 23(2) and 23(1)(A) of the Land Acquisition Act and they are also entitled to get 12 % interest towards difference on the amount so awarded u/ss.23(2) and 23(1)(A) of the Land Acquisition Act. Accordingly, while dismissing all these Appeals the appellants are directed to pay the same to the respondent claimants at the earliest and not later than 3 months from the date of receipt of the certified copy of Judgment and Award. Award be drawn accordingly.

(B.J.Shethna, J.)
Date : November 27, 2002
(Kundan Singh,J.)

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